

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

of McDonald's, alleges accidental injury on either September 22 or September 26, 1995. Claimant testified on two occasions in this matter, with his deposition first being taken December 18, 1995, followed by a preliminary hearing on February 1, 1996. Between the time of the deposition and the preliminary hearing, claimant first changed the date of accident from September 22, 1995 to September 26, 1995. At the deposition claimant described only a slip with no fall, while at the preliminary hearing he described a slip and fall to the ground. At the deposition claimant alleged he felt no pain for two to three days after the incident, while at the preliminary hearing he described immediate tingling with a gradual worsening of pain over several days. At the deposition claimant indicated he sought medical treatment two to three days after the incident, while at the preliminary hearing evidence indicated he went at least six days after September 26, 1995, before seeking medical care. At the deposition, claimant testified there were no witnesses to the incident, while at the preliminary hearing he identified his friend, Mark Kaufman, as a witness to the incident.

In proceedings under the Workers Compensation Act, the burden of proof shall be on the claimant to establish the claimant's right to an award of compensation by proving the various conditions on which the claimant's right depends by a preponderance of the credible evidence. K.S.A. 44-501; K.S.A. 44-508(g); Box v. Cessna Aircraft Co., 236 Kan. 237, 689 P.2d 871 (1984).

Not only does the claimant contradict himself on several occasions, the testimony of claimant's key witness, Mark Kaufman, also contradicts claimant's testimony in several instances.

The Appeals Board finds that claimant has failed to prove by a preponderance of the credible evidence his alleged injury of September 26, 1995 arose out of and in the course of his employment with respondent.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Special Administrative Law Judge William F. Morrissey dated February 8, 1996, is affirmed in all respects.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of April 1996.

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BOARD MEMBER

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**BOARD MEMBER**

- c:     Roger D. Fincher, Topeka, KS  
       H. Wayne Powers, Overland Park, KS  
       William F. Morrissey, Special Administrative Law Judge  
       Philip S. Harness, Director